

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ALFRED G. OSTERWEIL,

Plaintiff,

v.

Case No. 1:09-cv-825 (MAD/DRH)

GEORGE R. BARTLETT, III,

Defendant.

DECLARATION OF PAUL D. CLEMENT

PAUL D. CLEMENT, affirms under penalty of perjury that:

1. I am a partner in the firm Bancroft PLLC and, along with other Bancroft attorneys and attorneys from Greenbaum, Rowe, Smith & Davis LLP, represented plaintiff Alfred G. Osterweil in proceedings before the U.S. Court of Appeals for the Second Circuit and the New York State Court of Appeals. Accordingly, I am fully familiar with the facts and circumstances pertaining to this matter. This declaration is in support of plaintiff's motion pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d)(2) to award attorneys' fees as the prevailing party.

2. This motion is submitted on the basis that this Court rendered judgment in favor of plaintiff by determining that plaintiff, as a part-time New York resident, is entitled to apply for a handgun license pursuant to New York law notwithstanding that he is not domiciled in New York.

3. I am a member of the Bars of Virginia, Washington, DC, and Wisconsin; the Bar of the United States Supreme Court; the Bars of the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, D.C., and Federal Circuits; and bars of other courts.

4. I served as the 43rd Solicitor General of the United States from June 2005 until

June 2008. Before my confirmation, I served as Acting Solicitor General for nearly a year and as Principal Deputy Solicitor General for over three years. I have argued over 70 cases before the United States Supreme Court. Although I am an appellate attorney, rather than a subject-matter specialist, I have successfully handled Second Amendment litigation, including the Supreme Court argument in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010), in which fees were awarded under 42 U.S.C. 1988.

5. I have received, among other awards, the Edmund Randolph Award, the U.S. Department of Justice's highest honor. I have served as an adjunct professor at the Georgetown University Law Center since 1998 and frequently write and lecture for various continuing legal education programs on topics involving appellate and Supreme Court advocacy. In 2012, I was named Lawyer of the Year by the Bar Association of the District of Columbia and was selected by the National Law Journal in 2013 as one of the 100 most influential lawyers in America.

FACTUAL BACKGROUND

6. The record in this matter reveals the following facts: Mr. Osterweil is a retired attorney who previously served in the U.S. Army. For a number of years, Mr. Osterweil lived with his family full-time on a 21-acre plot of land in Schoharie County in Summit, New York. While living in Summit full-time, Mr. Osterweil served as a commissioner on the Summit Fire District Board of Commissioners and as an unpaid member of the Board of Directors of the Western Catskills Revitalization Corporation. After he retired, he decided to split his time between New York and Louisiana. He now spends the majority of his time in Louisiana and is domiciled there. Mr. Osterweil keeps a .22-caliber revolver in his Louisiana home for purposes of self-defense.

7. On May 21, 2008, Mr. Osterweil applied to Schoharie County officials for a New York State pistol license pursuant to N.Y. Penal Law § 400.00(2)(a), without which he may not lawfully possess a handgun in his home under New York law. To obtain a license, an applicant must meet several requirements. The licensing process begins with the submission of an application to the local licensing officer. § 400.00(3). The applicant must be over 21 years of age, of good moral character, not have a history of crime or mental illness, and there must not exist any other “good cause” for denying the license. § 400.00(1).

8. The application triggers a local investigation probing the applicant’s mental health and criminal history, moral character, and, in some circumstances, whether there is a “need” for the requested license. § 400.00(2). The investigating authority also takes the applicant’s fingerprints and uses that information to check for criminal history through the New York State Division of Criminal Justice Services (“DCJS”), the National Crime Information Center (“NCIC”), and the Federal Bureau of Investigation. The New York licensing law also states that an application for “a license to carry or possess a pistol or revolver” “shall be made . . . to the licensing officer in the city or county . . . where the applicant resides, is principally employed or has his principal place of business as merchant or storekeeper.” § 400.00(3)(a).

9. Mr. Osterweil’s home-handgun license application set this statutory machinery in motion. The Schoharie County Sheriff initiated the required investigation. He verified the information set forth in Mr. Osterweil’s application, contacted his references, conducted a background check using state information resources and the NCIC, and obtained and submitted Mr. Osterweil’s fingerprints to the DCJS and the FBI.

10. On June 24, 2008, the Sheriff sent a letter to Mr. Osterweil informing him that he needed to come to the Sheriff's office "to correct and/or complete some information" on his application. In a letter sent on June 25, 2008, Mr. Osterweil informed the Sheriff that since the time he had submitted his original permit application he had purchased a home in Louisiana that he intended to use as his primary residence, and that he would now use his Schoharie residence for only part of the year. The letter inquired whether under such circumstances Mr. Osterweil was still eligible for a permit.

11. On February 18, 2009, the Sheriff informed Mr. Osterweil that he was forwarding his application to Bartlett. As relevant here, in a February 20, 2009 letter, Bartlett informed Mr. Osterweil that his non-resident status would likely prevent the issuance of a home handgun license.

12. After several exchanges between Mr. Osterweil and Bartlett, Bartlett issued a decision on May 29, 2009, denying Mr. Osterweil's request for a pistol permit. Bartlett concluded that pistol permits may not be issued to "non-residents," and that Mr. Osterweil was a "non-resident" under New York law. That conclusion was primarily based on Bartlett's application of *In re Mahoney v. Lewis*, 605 N.Y.S.2d 168 (App. Div. 3d Dep't 1993), which held that § 400.00(3) requires that an individual be a New York domiciliary to be eligible for a handgun license. Bartlett further determined that New York's domicile requirement was consistent with the U.S. Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

13. Bartlett never concluded that Mr. Osterweil lacked the necessary character or qualifications to obtain a home handgun license. The license denial was predicated on the conclusion that Mr. Osterweil is domiciled in Louisiana and therefore is not a New

York resident, notwithstanding that Mr. Osterweil owns a home in New York and lives there part of the year with his wife, that he has family in Summit, and that Mr. Osterweil and his wife have participated and continue to participate in social, political, and community affairs in Schoharie County, including remaining as dues-paying members of the Summit Snow Riders, a local social group, and the Summit Conservation Club.

14. Mr. Osterweil, proceeding pro se, filed suit pursuant to 42 U.S.C. § 1983 against Bartlett, David A. Patterson, then Governor of the State of New York, and Andrew M. Cuomo, then Attorney General of the State of New York. Bartlett and his co-defendants were represented by the New York State Department of Law and the Office of the Attorney General of the State of New York. As relevant here, Mr. Osterweil's complaint alleged that the defendants denied him his fundamental Second Amendment right to keep and bear arms by denying his license request based on his part-time resident status and that this denial ran afoul of both the Second Amendment and the Equal Protection Clause.

15. After the defendants other than Bartlett were dismissed from the suit, both Mr. Osterweil and Bartlett moved for summary judgment. The New York Attorney General's Office argued that *Heller* and *McDonald* did not call into question state law "limiting its residency-based permits to domiciliaries" and that limiting home handgun possession to domiciliaries was consistent with "long-standing" New York precedent. The New York Attorney General's Office told this Court that Mr. Osterweil's contention that the Second Amendment protected his right to keep a handgun in his New York home was predicated on a misreading of *Heller* and *McDonald*. This Court ruled against Mr. Osterweil, holding that limiting home handgun licenses to domiciliaries did not violate the

Second Amendment or the Equal Protection Clause.

16. Mr. Osterweil retained counsel and appealed this Court's ruling. Just eight days before New York's brief was due to the Second Circuit (and a full 83 days after Mr. Osterweil's attorneys filed their opening brief) New York filed a motion asking the Second Circuit to certify the following question to this Court: "Does the applicant residency requirement in New York's pistol permit statute, N.Y. Penal Law § 400.00(3), require not merely residency but domicile in the State of New York?" New York opined that "[f]ollowing the Supreme Court's recent and dramatic shift in Second Amendment jurisprudence, there is reason to question whether the Court of Appeals would" conclude that New York law requires domicile as a precondition for a home handgun license. After that motion was referred to the merits panel, New York reiterated its view that a domicile requirement was constitutionally suspect in its brief on the merits and again requested certification. At the same time, however, New York also argued—in seeming conflict with the premise of its request for certification—that a domicile requirement would be constitutional under intermediate scrutiny.

17. The Second Circuit certified the following question to the New York Court of Appeals:

Is an applicant who owns a part-time residence in New York but makes his permanent domicile elsewhere eligible for a New York handgun license in the city or county where his part-time residence is located?

18. The New York Court of Appeals accepted the certified question and, after briefing and argument, answered the question in the affirmative, ruling that Mr. Osterweil could not be precluded from applying for a handgun license based on his part-time resident status.

19. Upon receiving the ruling of the New York Court of Appeals, the Second Circuit remanded the matter back to this Court.

20. On February 7, 2014, this Court directed that judgment be entered in Plaintiff's favor and ordered the case closed.

APPLICATION FOR ATTORNEY'S FEES

21. In my experience leading a national appellate practice at Bancroft PLLC, I have become familiar with the economics of law practice, billing rates, billing practices, the cost and recovery of litigation support services and other expenses of litigation, and the setting and collection of legal fees in a variety of circumstances, including cases presenting professional demands, factual and legal complexity, and risk and expense levels comparable to the instant case. I have derived this knowledge from personal experience negotiating fee agreements with sophisticated consumers of legal services, billing and collecting fees and expenses from clients and/or adverse parties in the legal marketplace, and regularly representing plaintiffs and defendants on an hourly rate basis. I have extensive experience related to billing practices for representation before the federal appellate courts.

22. I personally supervised the work done by the Bancroft PLLC attorneys and other employees in this case. I have endeavored to keep the number of personnel assigned to this case to the minimum reasonably necessary to serve my client's needs efficiently. Likewise, I have endeavored to make work assignments appropriate to each attorney or employee's skill set and level of experience.

23. The attached itemization of time spent on representing plaintiff in this matter is based on records made contemporaneously at the time the work was completed or the expense was paid. *See* Invoices attached hereto as Exhibit A.

24. The attached itemization reflects the reasonable hourly rates and time necessarily spent to challenge New York's unlawful denial of Mr. Osterweil's handgun license application on the ground that he is not domiciled in New York. I presently bill time at \$1350 per hour. However, as reflected in Exhibit A, at all times in this matter, my time

has been billed at my 2011 rate of \$1100 per hour. The time for all other Bancroft attorneys who worked on this matter has been billed at 2011 rates as well, ranging from \$425 per hour to \$625 per hour. All of the attorneys that worked on this matter have extensive experience in briefing and arguing constitutional matters in the federal courts. Case manager and research associate time was also billed at 2011 rates throughout the case—\$250 per hour for case manager work and \$225 per hour for research associate work.

25. A substantial amount of the billable work in this case was done by Bancroft associate D. Zachary Hudson. Zac received his B.S. with honors from the United States Naval Academy and a Masters in Public Policy from Georgetown University. Zac received his law degree from the Yale Law School, where he served as the Managing Editor of the Yale Law Journal and Articles Editor of the Yale Law and Policy Review. Following law school, Zac served as a law clerk to Chief Justice John G. Roberts, Jr., in the Supreme Court of the United States and Judge Brett M. Kavanaugh of the U.S. Court of Appeals for the D.C. Circuit. Zac has drafted briefs filed in cases in the United States Court of Appeals for the First, Second, Third, Fourth, Seventh, Ninth, Eleventh, and Federal Circuits. Bancroft currently bills and collects for Zac's work at the standard hourly rate of \$550, but his hourly rate throughout this case was \$425.

26. The time devoted to this matter by Bancroft's case manager and research associates has been written off in the exercise of reasonable billing judgment, and plaintiff does not seek reimbursement for the substantial work performed by them. *See* Exhibit A.

27. Additionally, during the course of this litigation, I reviewed and reduced many of the time entries for myself and other Bancroft attorneys in the exercise of reasonable billing judgment.

28. I have practiced law for over 20 years in the federal district courts, courts of appeals, and the U.S. Supreme Court. Since joining Bancroft PLLC in 2011, I have appeared in courts throughout the country, including:

- U.S. District Court, D.D.C., S.D.N.Y., E.D.N.Y., D. Mass., E.D. Pa., N.D. Okla., N.D. Ill., and E.D.N.C.
- U.S. Courts of Appeals for the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, Eleventh, D.C., and Federal Circuits.
- U.S. Supreme Court (argued 16 times in the last two Terms).

29. In the last four years, I have handled numerous cases in the U.S. courts of appeals on the merits, including:

- *Sony BMG Music Entm't v. Tenenbaum*, 660 F.3d 487 (1st Cir. 2011)
- *KG Urban Enterprises, LLC v. Patrick*, 693 F.3d 1 (1st Cir. 2012)
- *In re Methyl Tertiary Butyl Ether Products Liability Litigation*, 725 F.3d 2013 (2d Cir. 2013)
- *NCAA v. Governor of New Jersey*, 730 F.3d 208 (3d Cir. 2013)
- *Lincoln Nat. Life Ins. Co. v. Management Compensation Group Lee Inc.*, 532 F. App'x 480 (5th Cir. 2013)
- *Thompson v. Retirement Plan for Employees of S.C. Johnson & Son, Inc.*, 651 F.3d 600 (7th Cir. 2011)
- *S.C. Johnson & Son, Inc. v. Transport Corporation of America, Inc.*, 697 F.3d 544 (7th Cir. 2012)
- *Capitol Records, Inc. v. Thomas-Rasset*, 692 F.3d 899 (8th Cir. 2012)
- *Florida v. U.S. Dept. of Health and Human Services*, 648 F.3d 1235 (11th Cir. 2011)
- *Sovereign Military Hospitaller Order of Saint John of Jerusalem of Rhodes & of Malta v. Florida Priory of Knights Hospitallers of Sovereign Order of Saint John of Jerusalem, Knights of Malta, Ecumenical Order*, 702 F.3d 1279 (11th Cir. 2012)

30. Bancroft's fees and disbursements in this matter are commensurate with those in

the cases listed above, especially given the drawn out nature of the appellate process in this case, which involved not only merits briefing and argument in the U.S. Court of Appeals for the Second Circuit, but also briefing on the State's motion for certification and briefing and argument in the New York Court of Appeals after certification was accepted.

31. Bancroft's fees and disbursements in this matter are also consistent with the rates in the national appellate market for the price of legal services of comparable quality rendered in cases demanding similar skill, judgment, time, and performance. As a point of comparison, attached hereto as Exhibit B is the ABA Journal's December 19, 2009, article, "Some Top Lawyers Bill More than \$1,000 an Hour for Bankruptcy Work." This report reflects that bankruptcy attorneys have charged upwards of \$1,000 per hour for their work since at least 2009. In comparison, the hourly rates requested by Bancroft PLLC are reasonable.

32. By accepting this case, I was precluded from taking on other representation.

33. This case imposed time limitations on my schedule.

34. I am familiar with this type of litigation and the complexities of the constitutional and statutory issues involved. To accept a case of this type, I know from my experience that counsel is naturally precluded from accepting other employment. There are very few attorneys who practice Second Amendment constitutional litigation. The importance of effective legal representation is underscored in this case, in which Mr. Osterweil was unsuccessful when proceeding pro se, and yet the State modified its position significantly in response to the opening appellate brief, which represented contributions of counsel.

35. Congress' intent when it authorized attorney's fees and costs under 42 U.S.C. § 1988 was to permit plaintiffs to bring constitutional claims against governmental entities and to ensure that litigation costs did not deter plaintiffs from vindicating their constitutional

rights.

36. I submit that the request for \$189,294.28 (\$183,919.25 in fees and \$5,375.03 in disbursements) for services rendered to March 10, 2014—as outlined in Exhibit A—is reasonable in light of all the facts and circumstances surrounding plaintiff's claim and the lawsuit which resulted in a judgment for plaintiff on February 7, 2014 by this Court.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

WHEREFORE, plaintiff respectfully requests that this Court grant his motion pursuant to Fed. R. Civ. P. 54(d)(2) and 42 U.S.C. § 1988 (b) for the relief sought herein.

Dated: March 10, 2014

A handwritten signature in dark ink, appearing to read 'P. D. Clement', written over a horizontal line.

Paul D. Clement
BANCROFT PLLC
1919 M St., NW, Suite 470
Washington, DC 20036
Telephone: (202) 234-0900
pclement@bancroftpllc.com

Exhibit A

***Osterweil v. Bartlett*, No. 11-2420, Fee Summary**

| <u>Time Period</u> | <u>Fees</u> | <u>Disbursements</u> | <u>Total</u> |
|---------------------------------------|---------------------|----------------------|---------------------|
| December 1, 2011 – October 9, 2012 | \$83,637.50 | \$1,667.57 | \$85,305.07 |
| October 10, 2012 – December 31, 2012 | \$50,868.75 | \$896.00 | \$51,764.75 |
| January 1, 2013 – September 30, 2013 | \$62,925.00 | \$2,811.46 | \$65,736.46 |
| October 1, 2013 – February 15, 2014 | \$2,100.00 | | \$2,100.00 |
| Subtracting Case Manager and RA time: | <u>-\$15,612.00</u> | | <u>-\$15,612.00</u> |
| Total: | \$183,919.25 | \$5,375.03 | \$189,294.28 |

Osterweil v. Bartlett, No. 11-2420 (2nd Circuit)

Invoice # 10884

Total Fee & Disbursements

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|---------------|
| 12/12/11 | Review lower court materials and e-mail traffic related to case | DZH | 2.50 | \$1,062.50 |
| 12/13/11 | Exchange e-mails regarding Osterweil schedule/extension | PDC | 0.25 | \$275.00 |
| | Review filings from proceedings below; review relevant precedents | DZH | 6.00 | \$2,550.00 |
| 01/04/12 | Review docket and develop case timeline; e-mail P. Clement about case timeline | DZH | 0.50 | \$212.50 |
| 01/16/12 | Review Schoharie County proceedings | DZH | 1.50 | \$637.50 |
| 01/17/12 | Review recent Supreme Court case law on the Second Amendment; review recent courts of appeals case law on the Second Amendment; review case law on the Equal Protection Clause | DZH | 6.75 | \$2,868.75 |
| 01/18/12 | Draft facts section of brief; draft statement of the case; draft jurisdiction argument; draft argument | DZH | 9.00 | \$3,825.00 |
| 01/19/12 | Draft brief; review recent New York case law on gun control; review New York gun control statutory regime | DZH | 13.00 | \$5,525.00 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|--------------|---------------|
| 01/20/12 | Review draft brief | PDC | 0.50 | \$550.00 |
| | Complete draft brief; review record and revise facts section of brief; edit brief; proofread brief; e-mail brief to P. Clement | DZH | 10.00 | \$4,250.00 |
| 01/22/12 | Edit draft brief | PDC | 2.50 | \$2,750.00 |
| 01/23/12 | Compile notices of appearance for P. Clement and Z. Hudson; research local FRAP rules for Second Circuit | RA1 | 1.00 | \$225.00 |
| | Review and report to Z. Hudson Second Circuit filing rules for opening brief and joint appendix; coordinate with vendor to confirm filing deadlines and compliance requirements | SAL | 1.50 | \$375.00 |
| | Revise brief; coordinate appearance of P. Clement and Z. Hudson with D. Schmutter | DZH | 2.50 | \$1,062.50 |
| | Edit brief | PDC | 1.50 | \$1,650.00 |
| 01/24/12 | Bluebook, cite-check, proofread, and reformat opening brief draft for Second Circuit Court of Appeals filing | SAL | 3.25 | \$812.50 |
| | Communicate with D. Schmutter regarding joint appendix; adjust brief cites to match joint appendix; revise and edit brief | DZH | 2.00 | \$850.00 |
| | Edit brief; exchange e-mails regarding same | PDC | 1.00 | \$1,100.00 |
| 01/25/12 | Cite-check brief | RA3 | 1.50 | \$337.50 |
| | Revise and edit brief to incorporate edits and suggestions from other attorneys; review Judge Kavanaugh's dissent in Heller II; redact appendix | DZH | 6.25 | \$2,656.25 |
| | Bluebook, cite-check, and proofread opening brief draft for Second Circuit Court of Appeals filing; review and revise joint appendix draft; correspond with vendor regarding draft compliance | SAL | 6.75 | \$1,687.50 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|---------------|
| 01/25/12 | Create joint appendix table of contents; add joint appendix cites to brief; redact material from appendix; discuss filing schedule with S. Lima and assign different tasks | RA2 | 3.75 | \$843.75 |
| 01/26/12 | Prepare final drafts of joint appendix and brief to file in Second Circuit; generate tables and proofread brief; file and serve brief | SAL | 5.25 | \$1,312.50 |
| | Conduct final edits and read-through of brief; coordinate filing with D. Schmutter; coordinate printing and filing with case manager; communicate with P. Clement about finalizing brief and logistical issues | DZH | 3.50 | \$1,487.50 |
| 04/12/12 | Exchange e-mails regarding State's motion for certification | PDC | 0.25 | \$275.00 |
| 04/16/12 | Review Mahoney issue; e-mail P. Clement regarding same | DZH | 2.00 | \$850.00 |
| 04/17/12 | Prepare for and participate in call regarding State's pending certification motion | DZH | 2.00 | \$850.00 |
| | Prepare for and participate in call regarding State's pending certification motion | PDC | 1.00 | \$1,100.00 |
| 04/18/12 | Exchange e-mails regarding State's motion for stay | PDC | 0.25 | \$275.00 |
| 04/19/12 | Review Second Circuit and New York cases on certification | DZH | 3.00 | \$1,275.00 |
| 04/21/12 | Review New York's certification and stay motions; exchange e-mails with P. Clement regarding same | DZH | 1.00 | \$425.00 |
| | Exchange e-mails regarding certification response | PDC | 0.25 | \$275.00 |
| 04/23/12 | Research and locate examples of Second Circuit Court of Appeals opposition motions for Z. Hudson | SAL | 0.25 | \$62.50 |
| | Prepare for and participate in conference call with client; research stay and extension standards and motion format; draft and edit stay opposition; send draft to P. Clement; review P. Clement's edits; send draft to client | DZH | 6.00 | \$2,550.00 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|---------------|
| 04/23/12 | Prepare for and participate in conference call regarding response to State's certification and stay motions; edit opposition to stay | PDC | 2.00 | \$2,200.00 |
| 04/24/12 | Exchange e-mails regarding stay opposition; review Second Circuit case law on certification and delay | DZH | 2.00 | \$850.00 |
| | Exchange e-mails regarding response to stay motion | PDC | 0.25 | \$275.00 |
| 04/25/12 | Research NY attorney general enforcement discretion; research NY and Second Circuit law on constitutional avoidance and certification; review NY residence and domicile cases; begin drafting motion opposition; edit drafted preliminary statement and statement of facts | DZH | 7.00 | \$2,975.00 |
| 04/26/12 | Complete draft of argument section; review Bartlett's motion materials; edit draft and send to P. Clement | DZH | 4.50 | \$1,912.50 |
| 04/27/12 | E-mail P. Clement regarding stay; e-mail certification opposition to group | DZH | 0.25 | \$106.25 |
| 04/30/12 | Read and edit P. Clement's draft; circulate to group; set up cite-check; incorporate cite-check changes; coordinate submission of certification opposition; review final certification opposition | DZH | 2.50 | \$1,062.50 |
| | Bluebook, cite-check, proofread, and revise formatting of certification motion; generate tables of content and authorities | SAL | 2.00 | \$500.00 |
| | Edit opposition to certification; exchange e-mails regarding same | PDC | 2.50 | \$2,750.00 |
| 06/29/12 | Exchange e-mails regarding State's brief and argument availability | PDC | 0.25 | \$275.00 |
| 07/01/12 | Review briefs filed to date; develop matrix categorizing new arguments presented by Bartlett | DZH | 4.00 | \$1,700.00 |
| 07/03/12 | Draft task list with Z. Hudson to file in Second Circuit; reserve filing date with vendor to produce reply brief | SAL | 0.25 | \$62.50 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|--------------|---------------|
| 07/03/12 | Exchange e-mails regarding reply brief | PDC | 0.25 | \$275.00 |
| 07/05/12 | Review appellee brief; review certification case law; review Pullman doctrine case law; review waiver case law; review Heller and McDonald; review standing case law; review district court opinion; review all district court filings; review joint appendix | DZH | 12.00 | \$5,100.00 |
| 07/06/12 | Exchange e-mails regarding reply brief | PDC | 0.25 | \$275.00 |
| | Complete review of district court documents; review Decastro and Ezell cases; review Ezell briefs; draft outline; complete rough draft of brief | DZH | 8.75 | \$3,718.75 |
| 07/07/12 | Review NY brief; edit reply brief; exchange e-mails regarding same | PDC | 2.50 | \$2,750.00 |
| | Draft introduction and summary; complete draft of brief; add and edit citations; e-mail draft to P. Clement; conduct additional research on Pullman and waiver to address P. Clement's concerns; incorporate and proofread P. Clement's edits; send draft of brief to D. Schmutter | DZH | 8.25 | \$3,506.25 |
| 07/09/12 | Organize materials for cite-check | DZH | 0.25 | \$106.25 |
| 07/10/12 | Bluebook, cite-check, and revise formatting of reply brief; correspond with vendor regarding compliance and number of paper copies; draft certificate of service and update word count; generate tables of content and authorities; prepare final pdf for electronic filing | SAL | 3.25 | \$812.50 |
| | Review District Court docket for Bartlett's past fingerprint-related arguments; exchange e-mails regarding brief; review cases cited in brief; review District Court opinion; review Bartlett brief; review cite-check changes; edit brief; complete final draft of brief; send final draft to D. Schmutter | DZH | 7.00 | \$2,975.00 |
| | Exchange e-mails regarding reply brief | PDC | 0.25 | \$275.00 |
| 09/07/12 | Prepare and electronically file P. Clement's Hearing Acknowledgment form in Second Circuit | SAL | 0.25 | \$62.50 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|---------------|--------------------|
| 09/07/12 | Coordinate filing of oral argument confirmation | DZH | 0.25 | \$106.25 |
| 10/05/12 | Review case materials; assemble materials for oral argument preparation; e-mail P. Clement regarding moot | DZH | 1.25 | \$531.25 |
| | Exchange e-mails regarding Osterweil moot | PDC | 0.25 | \$275.00 |
| 10/08/12 | Exchange e-mails regarding Osterweil oral argument | PDC | 0.25 | \$275.00 |
| 10/19/12 | Coordinate moot; review materials in preparation for same | DZH | 1.25 | \$531.25 |
| | Prepare for oral argument in Osterweil | PDC | 0.50 | \$550.00 |
| | | | 182.50 | \$83,637.50 |

FEE SUMMARY:

| <u>DESCRIPTION</u> | <u>HOURS</u> | <u>RATE</u> | <u>AMOUNT</u> |
|--------------------------|--------------|-------------|---------------|
| Paul D. Clement | 16.75 | 1100.00 | \$18,425.00 |
| D. Zachary Hudson | 136.75 | 425.00 | \$58,118.75 |
| Case Manager - SAL | 22.75 | 250.00 | \$5,687.50 |
| Research Associate - CO | 3.75 | 225.00 | \$843.75 |
| Research Associate - CR | 1.00 | 225.00 | \$225.00 |
| Research Associate - PGM | 1.50 | 225.00 | \$337.50 |

DISBURSEMENTS

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | |
|--------------------------------------|--|---------------|--------------------|
| 01/31/12 | Copying, binding, handling, shipping of opening brief and joint appendix | SAL | \$1,074.72 |
| 07/10/12 | Second circuit reply brief | SAL | \$592.85 |
| Total Disbursements | | | \$1,667.57 |
| Total Fee & Disbursements | | | \$85,305.07 |

INVOICE

Becker Gallagher Legal Publishing, Inc.

8790 Governor's Hill Drive
Suite 102
Cincinnati, OH 45249
(513) 677-5044

Invoice No 2-12003
Date 1/31/2012
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Bill To

Bancroft PLLC
Stacy Lima
1919 M Street, NW, Ste. 470
Washington, DC 20036

U.S. COURT OF APPEALS-2nd Circuit

Case No. 11-2420

Alfred G. Osterweil v. George R. Bartlett, III

| Quantity | Description | Rate | Amount |
|----------|--|--------|--------|
| | Brief of Appellant and Joint Appendix - Review for technical compliance with all court rules, created cover page | 350.00 | 350.00 |
| 770 | Total Pages of Brief- Copying, binding (55 Pages x 14 Sets) | 0.15 | 115.50 |
| 2,562 | Total Pages of Joint Appendix -Copying, binding (183 Pages x 14 Sets) | 0.15 | 384.30 |
| | Fed Ex Next Day Air/Handling | 224.92 | 224.92 |

Total Amount Due \$1,074.72

INVOICE

Becker Gallagher Legal Publishing, Inc.

8790 Governor's Hill Drive
Suite 102
Cincinnati, OH 45249
(513) 677-5044

Invoice No 2-12014
Date 7/13/2012
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Bill To

Bancroft PLLC
Stacy Lima
1919 M Street, NW, Ste. 470
Washington, DC 20036

U.S. COURT OF APPEALS-2nd Circuit

Case No. 11-2420

Alfred G. Osterweil v. George R. Bartlett, III

| Quantity | Description | Rate | Amount |
|----------|---|--------|--------|
| | Reply Brief - Includes verification for compliance with all technical rules | 350.00 | 350.00 |
| 429 | Total Pages of Brief -Copying, binding (33 Pages x 13 Sets) | 0.15 | 64.35 |
| | Handling & certificates (\$50/Court; \$10/party) | 70.00 | 70.00 |
| | Postage for filing/service | 108.50 | 108.50 |

Total Amount Due \$592.85

Osterweil v. Bartlett, No. 11-2420 (2nd Circuit)

Invoice # 10565

Total Fee & Disbursements

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|--------------|---------------|
| 10/22/12 | Coordinate travel | DZH | 0.25 | \$106.25 |
| | Prepare for oral argument | PDC | 1.00 | \$1,100.00 |
| 10/23/12 | Prepare for moot court | EEM | 2.00 | \$1,150.00 |
| | Read briefs for moot court | KBC | 2.00 | \$1,250.00 |
| | Review briefs in preparation for moot; review relevant Second Amendment case law; review relevant New York case law; review certification cases; exchange e-mails with attorneys regarding moot; prepare questions for moot | DZH | 6.25 | \$2,656.25 |
| | Prepare for oral argument | PDC | 8.00 | \$8,800.00 |
| 10/24/12 | Prepare for and participate in moot court | EEM | 2.25 | \$1,293.75 |
| | Read briefs and cases; participate in moot court | KBC | 5.00 | \$3,125.00 |
| | Discuss case with K. Corkran and E. Murphy; review joint appendix materials; prepare for and participate in moot; type up questions for moot; conduct additional research on certification for P. Clement | DZH | 6.75 | \$2,868.75 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|--------------|--------------------|
| 10/24/12 | Prepare for and participate in moot court | PDC | 8.00 | \$8,800.00 |
| 10/25/12 | Review materials on NY attorney general authority; review additional certification case law; review case law on authority of federal courts to interpret state statutes; construct case timeline; send research results and time line to P. Clement | DZH | 6.25 | \$2,656.25 |
| | Prepare for oral argument | PDC | 6.00 | \$6,600.00 |
| 10/26/12 | Prepare for and participate in oral argument | DZH | 6.00 | \$2,550.00 |
| | Prepare for and present oral argument | PDC | 7.00 | \$7,700.00 |
| 12/14/12 | Review recent Posner Second Amendment decision for potential 28(j) letter | DZH | 0.50 | \$212.50 |
| | | | 67.25 | \$50,868.75 |

FEE SUMMARY

| <u>DESCRIPTION</u> | <u>HOURS</u> | <u>RATE</u> | <u>AMOUNT</u> |
|----------------------|--------------|-------------|---------------|
| Paul D. Clement | 30.00 | 1100.00 | \$33,000.00 |
| David Zachary Hudson | 26.00 | 425.00 | \$11,050.00 |
| Erin E. Murphy | 4.25 | 575.00 | \$2,443.75 |
| Kelsi B. Corkran | 7.00 | 625.00 | \$4,375.00 |

DISBURSEMENTS

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | |
|-------------|--|---------------|----------|
| 10/26/12 | Amtrak from Washington, DC to New York City and return | PDC | \$423.00 |
| | Amtrak from Washington to New York and return | DZH | \$473.00 |

Amount**Total Disbursements****\$896.00****Total Fee & Disbursements****\$51,764.75**

SALES RECEIPT - NOT VALID FOR TRAVEL



Purchased: 10/22/2012 12:01 PM Modified: 10/25/2012 6:09 PM Retain for your records.

60 Massachusetts Avenue Washington, DC 20002 800-USA-RAIL Amtrak.com

Reservation Number - 2BCF9A WASHINGTON, DC -
NEW YORK PENN, NY (Round-Trip) OCTOBER 22, 2012

Change Summary

Original Amount Paid

\$423.00

Train 2158: WASHINGTON, DC - NEW YORK (PENN STATION), NY Depart 9:00

AM, Friday, October 26, 2012

1 ACELA EXPRESS BUSINESS CL SEAT

\$174.00

Subtotal

\$174.00

Train 2167: NEW YORK (PENN STATION), NY - WASHINGTON, DC Depart 5:00

PM, Friday, October 26, 2012

1 ACELA EXPRESS BUSINESS CL SEAT

\$249.00

Subtotal

\$249.00

Revised Fare

\$423.00

Total Charged

\$0.00



PRESENT THIS DOCUMENT FOR TRAVEL

RESERVATION NUMBER 2BCF9A

RES# 2BCF9A-22OCT12

WAS



NYP

Round-Trip

WASHINGTON, DC

NEW YORK PENN, NY

OCTOBER 26, 2012

Depart

| TRAIN | ACELA EXPRESS | WASHINGTON - NEW YORK (PENN STATION) | DEPARTS | ARRIVES (Fri Oct 26) |
|-------------|---------------------|--------------------------------------|----------------|----------------------|
| 2158 | Oct 26, 2012 | 1 Acela Express Business CI Seat | 9:00 AM | 11:46 AM |

Return

| TRAIN | ACELA EXPRESS | NEW YORK (PENN STATION) - WASHINGTON | DEPARTS | ARRIVES (Fri Oct 26) |
|-------------|---------------------|--------------------------------------|----------------|----------------------|
| 2119 | Oct 26, 2012 | 1 Acela Express Business CI Seat | 6:00 PM | 8:45 PM |

PASSENGERS (1)

CLEMENT, PAUL

ADULT

AMTRAK GUEST REWARDS

7018307467

Proper Identification Is required for all passengers. This document is valid for only passengers listed. See www.amtrak.com/ID for details.

SALES RECEIPT - NOT VALID FOR TRAVEL



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Merchant ID 0298360 Massachusetts Avenue Washington, DC 20002 800-USA-

RAIL Amtrak.com

**Reservation Number - 2BED30 WASHINGTON, DC -
NEW YORK PENN, NY (Round-Trip) OCTOBER 22, 2012**

Billing Information

American Express ending in 2142 (Purchase) Authorization Code 222552

\$473.00

| | |
|--|-----------------|
| | Total |
| | \$473.00 |

Purchase Summary

Train 2158: WASHINGTON, DC - NEW YORK (PENN STATION), NY Depart 9:00

AM, Friday, October 26, 2012

1 ACALA EXPRESS BUSINESS CL SEAT

\$224.00

Subtotal

\$224.00

Train 2119: NEW YORK (PENN STATION), NY - WASHINGTON, DC Depart 6:00

PM, Friday, October 26, 2012

1 ACALA EXPRESS BUSINESS CL SEAT

\$249.00

Subtotal

\$249.00

| |
|--------------------------------|
| Total Charged by Amtrak |
| \$473.00 |



PRESENT THIS DOCUMENT FOR TRAVEL

RESERVATION NUMBER 2BED30

RES# 2BED30-22OCT12

WAS



NYP

Round-Trip

WASHINGTON, DC

NEW YORK PENN, NY

OCTOBER 26, 2012

Depart

| TRAIN | ACELA EXPRESS | WASHINGTON - NEW YORK (PENN STATION) | DEPARTS | ARRIVES (Fri Oct 26) |
|-------------|---------------------|--------------------------------------|----------------|----------------------|
| 2158 | Oct 26, 2012 | 1 Acela Express Business Cl Seat | 9:00 AM | 11:46 AM |

Return

| TRAIN | ACELA EXPRESS | NEW YORK (PENN STATION) - WASHINGTON | DEPARTS | ARRIVES (Fri Oct 26) |
|-------------|---------------------|--------------------------------------|----------------|----------------------|
| 2119 | Oct 26, 2012 | 1 Acela Express Business Cl Seat | 6:00 PM | 8:45 PM |

PASSENGERS (1)

AMTRAK GUEST REWARDS

HUDSON, ZAC

ADULT

n/a

Proper identification is required for all passengers. This document is valid for only passengers listed. See www.amtrak.com/ID for details.

Osterweil v. Bartlett, No. 11-2420 (2nd Circuit)

Invoice # 10758

Total Fee & Disbursements

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|--------------|---------------|
| 01/29/13 | Review opinion; exchange e-mails regarding opinion | DZH | 0.75 | \$318.75 |
| | Exchange e-mails regarding Osterweil opinion | PDC | 0.25 | \$275.00 |
| 01/30/13 | Review opinion and orders; review materials on certification process; exchange e-mails regarding certification and timing | DZH | 1.50 | \$637.50 |
| 02/08/13 | Review letter from NY Court of Appeals | DZH | 0.25 | \$106.25 |
| 02/09/13 | Review letter from NY Solicitor General to NY Court of Appeals; review NY certification procedures; exchange e-mails regarding potential letter to NY Court of Appeals | DZH | 0.75 | \$318.75 |
| 02/10/13 | Exchange e-mails regarding Osterweil certification | PDC | 0.25 | \$275.00 |
| 02/11/13 | Exchange e-mails regarding letter to NY Court of Appeals | DZH | 0.25 | \$106.25 |
| 02/12/13 | Exchange e-mails regarding letter to NY Court of Appeals; review certification and stay oppositions; draft letter to NY Court of Appeals; exchange e-mails with P. Clement regarding same | DZH | 1.75 | \$743.75 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|--------------|---------------|
| 02/12/13 | Exchange e-mails regarding next steps in Osterweil | PDC | 0.25 | \$275.00 |
| 02/15/13 | Exchange e-mails regarding letter to NY Court of Appeals; mail letter to NY Court of Appeals | DZH | 0.25 | \$106.25 |
| | Review letter to NY Court of Appeals in Osterweil | PDC | 0.25 | \$275.00 |
| 02/20/13 | Review NY Court of Appeals court order; review NY Court of Appeals rules | DZH | 0.50 | \$212.50 |
| 02/22/13 | Exchange e-mails regarding certification | DZH | 0.25 | \$106.25 |
| 03/07/13 | Draft case summary for client | DZH | 0.25 | \$106.25 |
| 03/14/13 | Exchange e-mails regarding briefing | DZH | 0.25 | \$106.25 |
| 03/15/13 | Exchange e-mails regarding certification briefing | PDC | 0.25 | \$275.00 |
| 03/18/13 | Review NY Court of Appeals scheduling order | DZH | 0.25 | \$106.25 |
| 04/03/13 | Exchange e-mails with P. Clement regarding opening brief | DZH | 0.25 | \$106.25 |
| | Exchange e-mails regarding opening brief | PDC | 0.25 | \$275.00 |
| 04/04/13 | Review Second Circuit filings | DZH | 2.00 | \$850.00 |
| 04/09/13 | Review briefing order; review NY Court of Appeals rules; review briefing in recently certified cases | DZH | 1.00 | \$425.00 |
| 04/10/13 | Build brief outline; review materials filed in Second Circuit; review relevant NY case law and statutory provisions | DZH | 4.50 | \$1,912.50 |
| 04/11/13 | Review relevant NY case law; review appendix materials; draft brief | DZH | 9.00 | \$3,825.00 |
| 04/12/13 | Draft brief; revise draft; speak to court regarding brief and appendix requirements; edit brief | DZH | 8.50 | \$3,612.50 |
| 04/13/13 | Review recent Second Amendment decisions; revise draft | DZH | 2.00 | \$850.00 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|---|---------------|--------------|---------------|
| 04/14/13 | Edit draft | DZH | 2.00 | \$850.00 |
| 04/15/13 | Exchange e-mails regarding brief | DZH | 0.25 | \$106.25 |
| 04/16/13 | Research and hire specialized vendor to file in NY Court of Appeals; research local format and filing rules; bluebook and cite-check appellant brief; organize and upload appendix documents; discuss filing requirements and deadlines with vendor | SAL | 2.75 | \$687.50 |
| | Exchange e-mails regarding brief | DZH | 0.25 | \$106.25 |
| 04/17/13 | Discuss appendix rules with vendor; bluebook and cite-check appellant brief | SAL | 4.00 | \$1,000.00 |
| | Edit brief; exchange e-mails regarding same | PDC | 1.00 | \$1,100.00 |
| 04/18/13 | Exchange e-mails regarding brief; develop additional constitutional avoidance material; edit revised brief; forward brief to D. Schmutter | DZH | 3.50 | \$1,487.50 |
| | Edit brief; exchange e-mails regarding same | PDC | 3.00 | \$3,300.00 |
| 04/19/13 | Contact Second Circuit to obtain audio cd of oral argument for Z. Hudson | RA1 | 1.25 | \$281.25 |
| | Exchange e-mails with P. Clement regarding brief; review recent Supreme Court opinions for material on sanctity of the home; review briefing order; review cite check; discuss logistics with D. Schmutter and case manager | DZH | 2.50 | \$1,062.50 |
| | Exchange e-mails regarding possible additions to brief | PDC | 0.50 | \$550.00 |
| | Coordinate with vendor to produce final drafts for review; revise appendix and brief covers and appendix draft | SAL | 2.75 | \$687.50 |
| 04/21/13 | Review and revise format of NY Court of Appeals appellant brief; generate table of authorities and update table of contents; e-mail cover edits to vendor | SAL | 1.50 | \$375.00 |
| | Review prepared briefing materials; revise citations to match new appendix; enter cite check changes; revise brief; send revised brief to P. Clement | DZH | 3.00 | \$1,275.00 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|---------------|
| 04/22/13 | Review updated brief; send to D. Schmutter; review updated appendix; exchange e-mails with D. Schmutter and case manager regarding brief; coordinate filing of brief; review electronic filing requirements; send final brief and appendix to D. Schmutter | DZH | 3.00 | \$1,275.00 |
| | Coordinate with vendor to file NY Court of Appeals appellant brief, appendix, and certificates; proofread and edit final brief; confirm final filing details with vendor and circulate final electronic versions of brief and appendix | SAL | 2.50 | \$625.00 |
| 04/23/13 | Exchange e-mails regarding brief | DZH | 0.25 | \$106.25 |
| 04/30/13 | Call Second Circuit to inquire about status of a CD of oral argument for Z. Hudson; exchange correspondence with case manager regarding creating a transcript from oral argument cd | RA1 | 0.25 | \$56.25 |
| | Exchange e-mails regarding brief and appendix issues; review NY Court of Appeals rules; assemble additional appendix materials | DZH | 1.25 | \$531.25 |
| | Discuss and draft task plan to correct NY Court of Appeals filing | SAL | 0.25 | \$62.50 |
| | Exchange e-mails regarding filing and oral argument | PDC | 0.50 | \$550.00 |
| 05/01/13 | Prepare pro hac vice materials for P. Clement and Z. Hudson in NY Court of Appeals; prepare and send certificates of good standing requests for P. Clement in DC, Virginia, and Wisconsin Bars; prepare and send certificates of good standing requests for Z. Hudson in DC and Ohio Bars; discuss pro hac vice requirements with Z. Hudson and case manager | RA1 | 2.75 | \$618.75 |
| | Exchange e-mails regarding brief and appendix issues; review briefing order; review NY Court of Appeals rules; discuss brief and appendix issues with NY Court of Appeals clerk's office; review and redact updated appendix; address pro hac issues | DZH | 5.00 | \$2,125.00 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|---------------|
| 05/01/13 | Prepare revised joint appendix | SAL | 1.75 | \$437.50 |
| | Exchange e-mails regarding oral argument and filing | PDC | 0.25 | \$275.00 |
| 05/02/13 | Review pro hac vice rules and procedures; draft pro hac vice letter of request | DZH | 0.50 | \$212.50 |
| 05/03/13 | Revise and redact joint appendix | SAL | 1.25 | \$312.50 |
| 05/06/13 | Telephone call to DC Bar, Virginia Bar, Ohio Bar, and Wisconsin Bar regarding certificates of good standing for P. Clement and Z. Hudson | RA1 | 0.50 | \$112.50 |
| | Review redactions; make additional redactions to appendix; update brief cover and brief appendix citations; exchange e-mails regarding pro hac vice motions; discuss redaction issues with case manager; review updated brief and appendix | DZH | 2.25 | \$956.25 |
| | Coordinate with vendor to file revised brief and appendix in the NY Court of Appeals; redact appendix; update tables of contents and authorities in appendix and brief | SAL | 1.50 | \$375.00 |
| 05/07/13 | Send courtesy copies of pro hac vice admission requests for P. Clement and Z. Hudson to the NY Attorney General and the NY Solicitor General's office; FedEx pro hac vice admission request to the NY Court of Appeals for Z. Hudson; pick up copies of the certificates of good standing from the D.C. Court of Appeals | RA1 | 0.50 | \$112.50 |
| | Discuss pro hac vice issues with clerk's office; discuss filing with case manager; exchange e-mails regarding brief, appendix and filing deadlines; review final appendix and brief; coordinate submission of appendix and brief; exchange e-mails with D. Schmutter regarding same | DZH | 3.00 | \$1,275.00 |
| | Revise certificate of service for Z. Hudson's signature; forward final versions of brief and appendix to vendor; coordinate with vendor to approve final versions and file in the NY Court of Appeals | SAL | 1.25 | \$312.50 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|---------------|
| 05/09/13 | Exchange correspondence with case manager regarding transcript of Second Circuit oral argument | RA1 | 0.25 | \$56.25 |
| | Hire vendor to transcribe Second Circuit oral argument | SAL | 0.25 | \$62.50 |
| | Exchange e-mails regarding argument and pro hac | PDC | 0.25 | \$275.00 |
| 05/13/13 | Discuss pro hac status with D. Schmutter | DZH | 0.25 | \$106.25 |
| 05/20/13 | Exchange e-mails with D. Schmutter regarding case | DZH | 0.25 | \$106.25 |
| 05/28/13 | Review argument notice; exchange e-mails regarding argument notice | DZH | 0.25 | \$106.25 |
| 06/10/13 | Discuss Osterweil briefing with Z. Hudson | EEM | 0.25 | \$143.75 |
| | Review state response brief; review opening brief; review NY Court of Appeals rules; review potential arguments in favor of not filing a reply brief; review argument transcript; discuss strategy with P. Clement | DZH | 3.25 | \$1,381.25 |
| 06/11/13 | Review NY Court of Appeals and Supreme Court constitutional avoidance cases; review treatise material on constitutional avoidance | DZH | 2.50 | \$1,062.50 |
| 06/12/13 | Review constitutional avoidance materials; review materials on certification jurisdiction; review materials on certification procedures; review district court and Second Circuit briefing | DZH | 6.00 | \$2,550.00 |
| | Exchange e-mails regarding reply brief | PDC | 0.25 | \$275.00 |
| 06/17/13 | Exchange correspondence with vendor regarding errata in transcript; listen to oral argument to identify judges and edit mistakes on oral argument transcript for Z. Hudson | RA1 | 1.50 | \$337.50 |
| | Discuss transcription errors with Z. Hudson; coordinate with research associate to revise transcript to prepare to file addendum in the NY Court of Appeals | SAL | 0.25 | \$62.50 |
| | Review additional Second Amendment materials; draft responses to State's timing arguments; draft responses to State's arguments attempting to | DZH | 9.00 | \$3,825.00 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|---------------|
| | distinguish Heller; draft responses to State's intermediate scrutiny arguments; review and edit Second Circuit transcript for potential inclusion as an addendum | | | |
| 06/18/13 | Send Second Circuit oral argument transcript changes to vendor | RA1 | 0.25 | \$56.25 |
| | Review state cases on argument forfeiture; draft response to State's constitutional avoidance arguments; draft introduction and summary of argument; complete rough draft of brief; edit draft | DZH | 8.00 | \$3,400.00 |
| | Correspond with vendor to prepare for reply filing in NY Court of Appeals | SAL | 0.25 | \$62.50 |
| 06/19/13 | Finalize draft; send draft and relevant materials to P. Clement | DZH | 2.50 | \$1,062.50 |
| 06/20/13 | Discuss filing with NY Court of Appeals clerk's office; review filing rules | DZH | 0.75 | \$318.75 |
| 06/21/13 | Exchange e-mails regarding brief format and argument; coordinate cite check | DZH | 0.50 | \$212.50 |
| | Bluebook and cite-check NY Court of Appeals reply brief | SAL | 1.75 | \$437.50 |
| | Exchange e-mails regarding reply brief | PDC | 0.25 | \$275.00 |
| 06/22/13 | Review P. Clement edits; revise brief in accordance with P. Clement instructions; send revised draft to D. Schmutter | DZH | 1.75 | \$743.75 |
| | Edit reply brief; exchange e-mails regarding same | PDC | 2.00 | \$2,200.00 |
| 06/24/13 | Revise brief; review cite check changes; proofread brief; coordinate filing of brief | DZH | 3.00 | \$1,275.00 |
| | Bluebook and cite-check reply brief; prepare addendum; coordinate with vendor to file brief and addendum in NY Court of Appeals | SAL | 3.75 | \$937.50 |

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|---------------|--------------------|
| 06/28/13 | Confirm filing acceptance with NY Court of Appeals | DZH | 0.25 | \$106.25 |
| 08/21/13 | Review oral argument order | DZH | 0.25 | \$106.25 |
| 09/09/13 | Review materials in preparation for moot; draft moot questions | DZH | 2.00 | \$850.00 |
| 09/10/13 | Prepare for and participate in moot; debrief moot | DZH | 2.00 | \$850.00 |
| 09/13/13 | Review reports of oral arguments | PDC | 0.25 | \$275.00 |
| | | | <u>146.50</u> | <u>\$62,925.00</u> |

FEE SUMMARY:

| <u>DESCRIPTION</u> | <u>HOURS</u> | <u>RATE</u> | <u>AMOUNT</u> |
|-------------------------|--------------|-------------|---------------|
| Paul D. Clement | 9.75 | 1100.00 | \$10,725.00 |
| D. Zachary Hudson | 103.50 | 425.00 | \$43,987.50 |
| Erin E. Murphy | 0.25 | 575.00 | \$143.75 |
| Case Manager - SAL | 25.75 | 250.00 | \$6,437.50 |
| Research Associate - CR | 7.25 | 225.00 | \$1,631.25 |

DISBURSEMENTS

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | |
|-------------|--|---------------|------------|
| 04/23/13 | Prepare and file opening brief and joint appendix in NY Court of Appeals | SAL | \$1,911.87 |
| 05/07/13 | Certificate of Good Standing fee from DC Court of Appeals | PDC | \$5.00 |
| | Certificate of Good Standing fee from DC Court of Appeals | DZH | \$5.00 |
| | Cab from Bancroft to DC Court of Appeals | RA1 | \$14.00 |
| | Cab from DC Court of Appeals to Bancroft | RA1 | \$14.00 |
| 05/29/13 | Planet Depos inv# 48830 for oral argument transcription | DZH | \$279.65 |
| 06/25/13 | Prepare and file appellant's reply brief in NY Court of Appeals | SAL | \$581.94 |

| | <u>Amount</u> |
|--------------------------------------|--------------------|
| Total Disbursements | \$2,811.46 |
| Total Fee & Disbursements | \$65,736.46 |

MAY 16 2013

Invoice

Counsel Press LLC
 SDS-12-2802
 PO Box 86
 Minneapolis, MN 55486-2802

Invoice Number: 0009039691

Date: 5/9/2013

Fed. Tax ID: 43-2070509

**PLEASE NOTE NEW
 REMITTANCE ADDRESS**

Terms: ON RECEIPT

Sold To

Bancroft PLLC
 1919 M Street, NW
 Suite 470
 Washington, DC 20036 USA

Attention: Paul D. Clement, Esq.

File No.: 247447

Court: NYCOA

Case Name: Osterweil v. Bartlett

Amount

For Reproduction of:

APPENDIX

- (16 copies)

| | | | | |
|--------|------------------------------|---|----------|------------|
| 1.00 | Cover(s) - 1st Side | @ | \$120.00 | \$120.00 |
| 339.00 | Page(s) | @ | \$3.35 | \$1,135.65 |
| 1.00 | Service(s) of Documents | @ | \$20.00 | \$20.00 |
| 1.00 | Filing of Documents | @ | \$70.00 | \$70.00 |
| 1.00 | Federal Express - Service(s) | @ | \$35.00 | \$35.00 |
| 1.00 | Federal Express - Filing | @ | \$59.00 | \$59.00 |
| 1.00 | Federal Express - To Client | @ | \$49.00 | \$49.00 |

APPELLANT'S BRIEF

- (20 copies)

| | | | | |
|------|----------------------|---|----------|----------|
| 1.00 | Preparation of Brief | @ | \$315.00 | \$315.00 |
|------|----------------------|---|----------|----------|

07-RB

This Invoice is Due Upon Receipt. Please Show Invoice
 Number on Check When Submitting Payment.

Subtotal \$1,803.65

Sales Tax \$108.22

\$0.00

Payment/Credit Amount \$0.00

Balance \$1,911.87

CASH RECEIPT

5/7/2013

CGS1004

Committee on Admissions
Committee on Admissions

Description

Amount

CERT OF GOOD STAND CK-385

\$10.00

Total Amount

\$10.00

5/7/2013

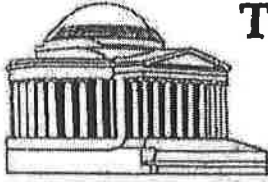
CGS1004

Committee on Admissions
Committee on Admissions

Total Amount

\$10.00

COA-ADMISSIONS



TAXICAB RECEIPT

Time: 11:10 AM

Date: 5/7/13

Origin of trip: 1919 M Street

Destination: DC Court of Appeals

Fare: \$14 Sign: _____

DC FLYER CAB

CAB # 26

TAG # H99751

05/07/13 12:19P

05/07/13 12:37P

TRIP # 192

DIST 1.99 mi

Rate 1 \$ 11.64

TOTAL \$ 11.64

COMPLAINTS CALL

202 645 6010

HAVE A NICE DAY!

TOTAL \$14

INVOICE

Stacy Lima
Bancroft PLLC
1919 M Street, NW
Suite 470
Washington, DC 20036

| | | |
|------------------------|---------------------|----------------|
| Invoice No. | Invoice Date | Job No. |
| 48830 | 5/29/2013 | 37459 |
| Job Date | Case No. | |
| 5/10/2013 | | |
| Case Name | | |
| Transcription Services | | |
| Payment Terms | | |
| Due upon receipt | | |

TRANSCRIPTION WITH INDEX OF:

Oral Argument

67.00 Pages

264.65

Regular Delivery

15.00

TOTAL DUE >>>**\$279.65**

Due upon receipt and is not contingent on client payment.

For billing questions, please email billing@planetdepos.com or call 888.433.3767

Thank you for your business.

Tax ID:*Please detach bottom portion and return with payment.*

Stacy Lima
Bancroft PLLC
1919 M Street, NW
Suite 470
Washington, DC 20036

Job No. : 37459 BU ID : 40-AUDTR

Case No. :

Case Name : Transcription Services

Invoice No. : 48830

Invoice Date : 5/29/2013

Total Due : \$279.65

Remit To: **Planet Depos**
405 East Gude Drive
Suite 209
Rockville, MD 20850

PAYMENT WITH CREDIT CARD

Cardholder's Name: _____

Card Number: _____

Exp. Date: _____ Phone#: _____

Billing Address: _____

Zip: _____ Card Security Code: _____

Amount to Charge: _____

Cardholder's Signature: _____

Invoice

Counsel Press LLC

IDS-12-2802
 PO Box 86
 Minneapolis, MN 55486-2802

Invoice Number: 0009040734

Date: 06/26/2013

Fed. Tax ID: 43-2070509

Terms: ON RECEIPT

Sold To

Bancroft PLLC
 1919 M Street, NW
 Suite 470
 Washington, DC 20036 USA

Attention: Paul D. Clement, Esq.

File No.: 248138

Court: NYCOA

Case Name: Osterweil v. Bartlett

Amount

For Reproduction of:**REPLY BRIEF**

- (17 copies)

| | | | |
|-----------------------------------|---|----------|----------|
| 1.00 Preparation of Brief | @ | \$350.00 | \$350.00 |
| 1.00 Service(s) of Documents | @ | \$20.00 | \$20.00 |
| 1.00 Filing of Documents | @ | \$70.00 | \$70.00 |
| 1.00 Federal Express - Service(s) | @ | \$24.00 | \$24.00 |
| 1.00 Federal Express - Filing | @ | \$33.00 | \$33.00 |
| 2.00 Express Mail - Client | @ | \$26.00 | \$52.00 |

07-RB

This Invoice is Due Upon Receipt. Please Show Invoice
 Number on Check When Submitting Payment.

Subtotal \$549.00

Sales Tax \$32.94

\$ 0.00

Payment/Credit \$0.00

Balance \$581.94

Osterweil v. Bartlett, No. 11-2420 (2nd Circuit)

Invoice # 10884

Total Fee & Disbursements

| <u>DATE</u> | <u>DESCRIPTION</u> | <u>LAWYER</u> | <u>HOURS</u> | <u>AMOUNT</u> |
|-------------|--|---------------|--------------|-------------------|
| 10/15/13 | Review New York Court of Appeals opinion; exchange e-mails regarding same | DZH | 0.50 | \$212.50 |
| | Exchange e-mails regarding New York Court of Appeals decision | PDC | 0.25 | \$275.00 |
| 10/16/13 | Exchange e-mails regarding next steps and fee recovery issues | DZH | 0.25 | \$106.25 |
| | Exchange e-mails regarding next steps | PDC | 0.25 | \$275.00 |
| 12/23/13 | Exchange e-mails regarding Second Circuit opinion | PDC | 0.25 | \$275.00 |
| 12/26/13 | Review Second Circuit opinion and communications regarding same | DZH | 0.50 | \$212.50 |
| 02/03/14 | Review materials on prevailing party status and recovering fees; review materials forwarded by co-counsel; exchange e-mails regarding same | DZH | 1.00 | \$425.00 |
| 02/04/14 | Exchange e-mails regarding reconsideration verse reapplication; discuss same with co-counsel | DZH | 0.50 | \$212.50 |
| 02/08/14 | Exchange e-mails regarding fee motion | DZH | 0.25 | \$106.25 |
| | | | <u>3.75</u> | <u>\$2,100.00</u> |

FEE SUMMARY:

| <u>DESCRIPTION</u> | <u>HOURS</u> | <u>RATE</u> | <u>AMOUNT</u> |
|--------------------|--------------|-------------|---------------|
| Paul D. Clement | 0.75 | 1100.00 | \$825.00 |
| D. Zachary Hudson | 3.00 | 425.00 | \$1,275.00 |

Exhibit B

Some Top Lawyers Bill More than \$1,000 an Hour for Bankruptcy Work

Posted Dec 16, 2009 11:41 AM CDT

By Debra Cassens Weiss

A few lawyers are billing more than \$1,000 an hour for bankruptcy work in Manhattan and Delaware courts.

The top billers for the year ending in August 2009 were Pleasantville, N.Y., solo Alan Harris and tax partner Bernie Pistillo of Shearman & Sterling and, the American Lawyer reports. Harris charged \$1,200 an hour for work as special real estate litigation counsel on the bankruptcy of Digital Printing Systems, the story says. Pistillo charged \$1,065 an hour for work in the bankruptcy of a building products supplier, Stock Building Supply Holdings.

Billing rates for 11 other partners in top law firms also broke the \$1,000 an hour mark, while some associate rates topped \$700 an hour. The publication gleaned the information from its own database of more than 13,000 billing rate entries submitted in bankruptcy cases in Delaware and the Southern District of New York, the nation's two busiest bankruptcy courts

Harvey Miller of Weil, Gotshal & Manges billed \$950 an hour for work on the Lehman Brothers bankruptcy, while Corinne Ball of Jones Day billed \$900 an hour for work on the Chrysler case.

The law firm with the top median rate for partners in bankruptcy cases was Simpson Thacher & Bartlett, with a median hourly rate of \$980.

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